

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JACK R. LONG, JR., <sup>1</sup>	§
	§ No. 500, 2011
Respondent Below-	§
Appellant,	§
v.	§ Court Below—Family Court
	§ of the State of Delaware
	§ in and for New Castle County
ANGELA THOMAS,	§ File No. 10-07-01TN
	§ Petition No. 10-21831
Petitioner Below-	§
Appellee.	§

Submitted: February 9, 2012

Decided: February 23, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

**ORDER**

This 23<sup>rd</sup> day of February 2012, upon consideration of the appellant’s brief filed pursuant to Supreme Court Rule 26.1, his attorney’s motion to withdraw, and the response of the appellee thereto, it appears to the Court that:

(1) The respondent-appellant, Jack R. Long, Jr. (“Father”), has filed an appeal from the Family Court’s August 22, 2011 and November 1, 2011 orders terminating his parental rights (“TPR”) in his minor child, Gail, born April 8, 2008. On appeal, Father’s counsel has filed an opening brief

---

<sup>1</sup> This Court *sua sponte* assigned pseudonyms to the parties by Order dated September 16, 2011. Supr. Ct. R. 7(d). In this Order, we also assign a pseudonym to the parties’ minor child as well as the child’s stepfather.

and a motion to withdraw pursuant to Supreme Court Rule 26.1. Father's counsel represents that he is unable to present a meritorious argument in support of the appeal. Father has submitted several points for this Court's consideration. The petitioner-appellee, Angela Thomas ("Mother"), has moved to affirm the Family Court's judgment. For the reasons that follow, we conclude that the judgment of the Family Court must be affirmed.

(2) The record in this case reflects that Mother and Father have never been married and only lived together for a short time in 2007. On June 30, 2010, Mother filed a petition to terminate the parental rights of Father on the grounds of abandonment and failure to plan. A petition for adoption also was filed by Cal Thomas, Mother's husband. On September 28, 2010, an answer to the TPR petition was filed by Father's court-appointed counsel. The answer claimed that Mother had refused to allow Father to have contact with Gail. At the time of these proceedings, Father was incarcerated in Delaware on criminal charges related to domestic abuse.

(3) The TPR hearing began on February 16, 2011 and took place over the course of three days---February 16, March 4, and March 11, 2011. The following evidence was presented. A social worker with Catholic Charities testified that she was asked by the Family Court to prepare a report and recommendation in connection with Mother's TPR petition as well as

Mr. Thomas' petition for adoption. She testified that she gathered information from Mother, Father and Mr. Thomas. She noted that there was a marked discrepancy between the information provided by Mother and Father concerning the history of domestic violence. While Mother cited examples of physical and psychological abuse, Father denied any history of violence other than slapping Mother once after she bit him. She also noted that Gail had never interacted with Father and that Gail considered Mr. Thomas, whom she has known since she was born, as her father. Gail also has a bond with another child born to Mother and Mr. Thomas. The social worker, finally, testified that she knew of no evidence suggesting that Father had ever provided monetary support for Gail.

(4) Mother testified that there was currently a protection from abuse order ("PFA order") in place with respect to Father. She stated that, at the time of Gail's birth, she was not living with Father. She and Father had moved in together in 2007. At that time, Father became increasingly verbally and physically abusive. He was arrested sometime in October or November of 2007 and was convicted of harassment and other domestic abuse-related charges in March of 2008. In spite of being ordered not to contact Mother, Father nevertheless forced his way into Mother's house while attempting to escape from the police and threatened her and her

unborn child. Father was sentenced for a probation violation in September of 2010.

(5) Mother also testified that she and Mr. Thomas were married in May of 2010. They have a son together who is now two years old. He and Gail have developed a strong sibling bond. Following the birth of Gail, Mother filed a custody petition. Thereafter, Father filed a petition for visitation. The Family Court granted Mother sole custody and granted Father visitation with Gail every six weeks at the Family Visitation Center of Child, Inc.<sup>2</sup> Mother completed her orientation course, as she was ordered to do, and took Gail to the Visitation Center on four separate occasions for visitation with Father. Because Father never appeared, however, the Family Court released her from having to appear at the Visitation Center.

(6) Mother's brother testified that he has known Father since 2007. He was deployed overseas the first time he became aware of Father's abusive behavior toward Mother. When he came home, he confronted Father and told him to stop the abusive behavior. He later had a phone conversation with Father in which he again told Father to cease abusing Mother.

---

<sup>2</sup> Father appealed the Family Court's decision to this Court. By Order dated February 4, 2010, we affirmed the Family Court's judgment. *Lambert v. Greene*, Del. Supr., No. 191, 2009, Ridgely, J. (Jan. 19, 2009).

(7) Gail's maternal grandmother testified that she never had a close relationship with Father. She and her husband received two letters from Father stating that he was going to straighten himself out so he could take care of Gail. She confirmed Mother's testimony that Father never appeared at the Visitation Center for visitation with Gail. She acknowledged that Father may have been incarcerated on one or more of the visitation dates. She, finally, described an incident in 2007 in which Mother telephoned early in the morning and asked to come over. She had bruising on her face and body, which Mother said was caused by Father. When she took Mother back home, she observed holes in the walls and doors torn off their hinges, which, according to Mother, also was caused by Father.

(8) Mr. Thomas, Mother's husband, testified that he and Mother have been together since 2008 when Mother was pregnant with Gail. He has a close father-daughter relationship with Gail. He testified that he is in good health and has worked as a supervisor at W.L. Gore for twelve years. He has a son by a prior marriage whom he sees two or three week-ends a month and with whom Gail has a close relationship.

(9) Father called several witnesses on his behalf. The first witness owns a lawn care business and employed Father in 2010. He testified that he and Father had long conversations about Father's personal situation. Father

stated that he loved his daughter very much and wanted to change his life around so he could care for her. This individual testified that Father's work ethic was good and that he would hire Father again when he was released from prison. Father's second witness testified that she dated Father for a time and that he treated her daughter well and never threatened her or her daughter. She also testified that she has visited Father in prison and believes that he has turned his life around. Father's brother testified that Father stayed at his home for a time and treated his children well.

(10) Father also called a representative from the Family Visitation Center of Child, Inc. to testify. She stated that Father appeared for an orientation session in July 2009. He seemed anxious to have visitation with his daughter. Because Father failed to show up for his visitation appointments on four occasions, however, the case was de-activated. She also testified that Father recently contacted the Visitation Center seeking to be reinstated in the program and was told to file a petition in the Family Court.

(11) Father testified in his own behalf. According to Father, he is now serving a criminal sentence at Gander Hill in Wilmington, Delaware. He stated that he lived with Mother for two short periods in her apartment. He acknowledged that, in June 2007, he hit Mother after a misunderstanding

and ultimately pleaded guilty to assault. By July 2007, he and Mother were back together. During this time, Gail was conceived. Shortly thereafter, Father violated his probation with respect to a 2005 sentence and was incarcerated until October 2008. He found out during his incarceration that Gail had been born. He subsequently filed a petition for joint custody and visitation in the Family Court.

(12) Father further testified that, after he was released from prison, Mother successfully filed a PFA against him. He believed that he was prevented from contacting Gail as a result of the PFA, but it turned out that the Family Court Commissioner had included Gail on the order by mistake. Father stated that he attempted to make a child support payment with his tax refund check while he was incarcerated, but, because he included incorrect information on the check, it could not be cashed and was returned to him. After Father was released from prison, he violated the PFA and was returned to prison as a result. He ultimately was released in July of 2009.

(13) Several days after Father's release, he again was arrested for a probation violation in connection with a Pennsylvania sentence. He was released in July of 2010, but arrested again in August 2010. According to Father, he was incarcerated at the time of all four appointments at the Visitation Center, which explains why he did not show up. Father testified

that, during his various incarcerations, he attempted to establish contact with Gail and asked Mother for information about her, to no avail. He stated that his release date is March 2014. Father's position is, essentially, that he has sought a relationship with Gail since she was born but that he has been prevented from having such a relationship as a result of circumstances beyond his control and as a result of actions taken by Mother. According to Father, he is being treated for bipolar disorder. Father acknowledged that Mother's husband is an excellent father to Gail.

(14) In his appeal from the Family Court's decision terminating his parental rights, Father claims that a) Mother's accusations against him are unfounded and her testimony was not credible; b) the PFAs prevented him from having contact with Gail; c) Gail will be more mature at the time of his release date; d) he is ready to assume more responsibility for Gail after his release from prison; e) Mother prevented him from having contact with Gail; f) the criminal charges against him occurred prior to Mother becoming pregnant with Gail; and g) no domestic violence occurred in the presence of Gail.

(15) In its order terminating Father's parental rights, the Family Court found that Mother had established a basis for termination of Father's parental rights on the ground of failure to plan by clear and convincing



evidence.<sup>3</sup> The Family Court also granted Mother's husband's petition for adoption. In support of its decision, the Family Court credited Mother's testimony regarding domestic violence and abuse committed by Father. The Family Court noted that, in August 2009, a PFA order was issued against Father and, in August 2010, the PFA order was extended until August 2011. Also in support of its decision, the Family Court noted that, although Father has made progress with his anger management issues while in prison, he will not be released until March 2014. His criminal history includes convictions of burglary, assault, DUI, forgery, criminal contempt of a PFA order, harassment and non-compliance with conditions of bond.

(16) The Family Court also observed that Gail has never had any contact with Father, who has been incarcerated for most of the child's life. The Family Court also noted that Mother's husband, Mr. Thomas, has a close father-daughter relationship with Gail, which has existed for several years. Their family unit includes a son born to him and Mother as well as his son from a prior marriage. Because Gail has no relationship with Father, any alteration of the current custodial arrangement, including granting Father visitation, would be detrimental to her best interests.

---

<sup>3</sup> The Family Court found that Mother did not prove by clear and convincing evidence that Father intended to abandon the child.

(17) This Court’s review of the Family Court’s decision to terminate parental rights entails consideration of the facts and the law as well as the inferences and deductions made by the Family Court.<sup>4</sup> To the extent that the Family Court’s rulings of law are implicated, our review is *de novo*.<sup>5</sup> The Delaware statute governing the termination of parental rights requires a two-step analysis.<sup>6</sup> First, there must be proof of statutory basis for termination.<sup>7</sup> Second, there must be a determination that termination of parental rights is in the best interests of the child.<sup>8</sup> Both requirements must be established by clear and convincing evidence.<sup>9</sup>

(18) We have carefully reviewed the parties’ submissions as well as the record below, including the transcript of the TPR hearing. We conclude that there is ample evidence supporting the Family Court’s termination of Father’s parental rights on the ground of failure to plan, as well as ample support for the Family Court’s decision to grant Mr. Thomas’ petition to adopt Gail. Moreover, we conclude that there is no merit to any of Father’s claims of error. To the extent that the Family Court gave credence to

---

<sup>4</sup> *Wilson v. DFS*, 988 A.2d 435, 439-40 (Del. 2010) (citing *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983)).

<sup>5</sup> *Id.* at 440.

<sup>6</sup> Del. Code Ann. tit. 13, §1103 (listing grounds for termination of parental rights); *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000).

<sup>7</sup> *Id.*

<sup>8</sup> *Shepherd v. Clemens*, 752 A.2d at 537; Del. Code Ann. tit. 13, §722(a) (listing best interests factors).

<sup>9</sup> *Powell v. DSCYF*, 963 A.2d 724, 731 (Del. 2008).

Mother's testimony over that of Father, the Family Court properly exercised its discretion in so doing.<sup>10</sup> Even assuming that the Family Court Commissioner erroneously believed Gail was covered by one of the PFAs requested by Mother and that Mother was aware that Father's incarceration prevented him from going to the Visitation Center to visit with Gail, ultimately, it was Father's successive incarcerations, for which he himself is responsible, and not any action by Mother or the Family Court, that has prevented Father from establishing a relationship with his child.

NOW, THEREFORE, IT IS ORDERED that Mother's motion to affirm is GRANTED. The judgment of the Family Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

---

<sup>10</sup> *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).